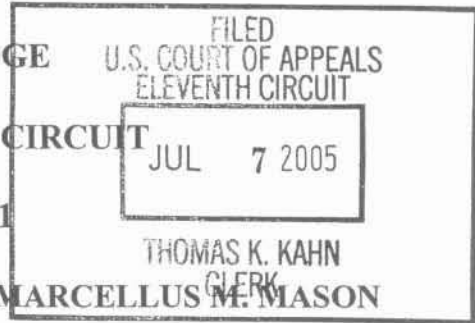


CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Miscellaneous No. 05-0011

IN THE MATTER OF A COMPLAINT FILED BY MARCELLUS M. MASON



IN RE: The complaint of Marcellus M. Mason, against Donald L. Graham, United States District Judge for the United States District Court for the Southern District of Florida, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. § 351-364.

ORDER

Mr. Marcellus M. Mason filed this complaint against U.S. District Judge Donald L. Graham pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and Addendum III to the Rules of the Judicial Council of the Eleventh Circuit.

In this complaint, there are only two allegations that have not been determined in previous complaints filed by Mr. Mason against Judge Graham. Mr. Mason first complains that Judge Graham issued a verbal order on January 14, 2005, which advised him not to file any further pleadings with the court. Mr. Mason then complains that this order was not in writing to prevent him from filing an appeal.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling or frivolous or both”, and the allegations of the complaint “lack any factual foundation or are conclusively refuted by objective evidence”. Therefore, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(ii) and Addendum III Rules 4(b)(2)(3) and (4) this Complaint is **DISMISSED**.

Chief Judge

Monday, January 31, 2005

J.L. Edmondson
c/o Thomas K. Kahn, Clerk
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 3030

Judge Edmondson, I believe your job is to investigate, not to seek a contrived or concocted reason for a summary dismissal. However, I have lightened your load by making all the documentation necessary to investigate this matter publicly available on the Internet. In general you can visit any of four different websites for documentation: (1)<http://secretlaw.com>; (2)<http://geocities.com/mcneilmason/>; (3)<http://donaldlgraham.blogspot.com>; (4)<http://mmason/freeshell.org>; Moreover, I have cited to the Internet where the appropriate documents can be downloaded.

Judge Graham has been accused of: intentionally lying and misrepresenting the law; refusing to rule on a motion for a preliminary injunction for more than 15 months; allowing scores of motions to go undecided; and usurping legal authority. These allegations were specifically mentioned and supported by actual documents in the following cases with the Eleventh Circuit: Direct Appeal, Case No. 01-13664-A, mandamus, Case No. 01-15754, however there is no mention of these allegations in any of these actions. It would appear that a law clerk at the Eleventh Circuit gave himself permission to simply ignore these very serious allegations because they can not be denied. This is unacceptable and simply will not be tolerated. Mr. Donald L. Graham is going to be held accountable for his actions. Please see URL: <http://mmason/freeshell.org/refusetodiscuss.html>; and <http://mmason/freeshell.org/trickery/trickery.htm>. It would appear that the Eleventh Circuit is unwilling to address allegations of misconduct by a federal judge either by the appellate process or by Section 372(c) complaint. Congress did make the appellate process and section 372(c) mutually exclusive. Your court has refused to address these allegations of misconduct in all forums, as your court has not found a forum where it wants to discuss and investigate these allegations. Judge Edmondson, I would appreciate if you would not insult my intelligence, as I don't insult your intelligence, and give me the standard boilerplate response like the following:

The allegations of the Complaint are "directly related to the merit of a decision or procedural ruling" and or Action on the complaint is no longer necessary because of intervening events, and therefore moot". Consequently, pursuant to 28 U.S.C. § 372(c)(3)(A) and (3)(B) and Addendum Three Rule 4 (a)(2), this Complaint is DISMISSED.

There is no such thing "on the merits" when a judge usurps legal authority or makes decisions he clearly has no legal authority to make in the first instance. Moreover, with respect to this complaint, the *coup de grace* is that the Eleventh Circuit denied me the opportunity to have appellate review of a patently illegal injunction, (D.E. 878). Not only that, but the Eleventh Circuit struck my brief for arguing this order, and then turnaround and used it against me.

Congress did not intend for Chief Judges to rid themselves of complaints of misconduct by simply citing, without investigation and substantiation, the summary dismissal clause of the statute. However, if they did, they should know. To that end, a copy of this complaint has been mailed to the 2004 Rehnquist-Breyer Commission, the Chairman and ranking member of both the Judiciary Committee of the House of Representatives and Subcommittee on Courts, and J. Kennedy and Chief Justice Rehnquist as well.

ALLEGATIONS OF MISCONDUCT SUPPORTED BY THE RECORD

Judge Graham has arrogated his own authority, much like Saddam Hussein, Stalin, Hitler, other infamous autocrats and dictators. Specific acts of misconduct committed by Mr. Graham include, but is not limited to the following:

- Concocting a patently illegal injunction or pre-filing screening under the guise of “inherent authority”. See (D.E. 878), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE-878/de878.pdf>.
- Using this patently illegal injunction to initiate and gain a criminal contempt conviction.
- Allowing the Eleventh Circuit to use this patently illegal injunction, (D.E. 878), rendered on September 20, 2001, to affirm the dismissal of a case, 99-14027-CV-Graham, that closed on June 20, 2001. Imagine that!
- Allowing the Eleventh Circuit to destroy my right under the “rule of law” to appeal this patently illegal injunction, (D.E. 878).
- Using intimidation by ordering me, Robert Waters, AUSA, Frank Smith, U.S. Probation, and others to come to a “Status/Motion Hearing” on January 9, 2005.
- Abusing his office and circumventing the appellate process by ordering me not to file any one page requests to file Rule 60(b) motions and refusing to put this illegal order in writing so that it can be challenged on appeal.

Collins v. Morgan Stanley Dean Witter, 224 F.3d 496; 2000 U.S. App. LEXIS 22236; 47 Fed. R. Serv. 3d (Callaghan) 399 (5th Cir. 2000)

We notice that the district judge in this matter, like some other district judges in this circuit, has the custom of usually, or even always, prohibiting litigants from filing motions for reconsideration or relief, such as those contemplated by FED. R. CIV. P. 59 and 60. No judge has that authority. Accordingly, we direct the judge in this case, and others in this circuit, to entertain post-judgment motions as contemplated by the rules. Moreover, the district courts must carefully consider each such motion on its merits, without begrudging any party who wishes to avail himself of the opportunity to present such motions in accordance with the rules of procedure and with the standards of professional conduct.

First Amendment, U.S. Constitution.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, **and to petition the government for a redress of grievances.**

On January 9, 2005, under the guise of a “Status/Motion Hearing”, Judge Graham ordered the following¹:

- That I not “file” any motion for relief under Rule 60(b).
- That I not file any one page request or letter seeking permission to file any motion for relief under Rule 60(b).
- That I not direct any personal request for relief to him, filed or not filed under the court’s authority.
- Mr. Graham has refused to put any of these directives in writing so that they can be appealed. Essentially, Mr. Graham has arrogated his own authority.
- Given that Mr. Graham has refused to put these directives in writing, there is no pretense of law supporting his verbal orders, consequently, he can not be acting under the “rule of law”. Exactly what “rule of law” would he be acting under?

Mr. Graham abused the criminal contempt process by reliance upon a patently illegal order, or injunction, or pre-filing order. See (D.E. 878), URL: <http://secretlaw.com/NewComplaint/HelpLetters/DE-878/de878.pdf>. Page 3 of this injunction boldly states that it was issued without notice and opportunity to respond: “*THIS CAUSE came before the Court sua sponte*”.

“A court should be cautious in exerting its inherent power and “must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.” Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001)(quoting US Supreme Court Chambers v. NASCO, Inc., 501 U.S. 32, 50 (1991)). “In addition, the accused must be given an opportunity to respond, orally or in writing, to the invocation of such sanctions and to justify his actions.” In Re Mroz, 65 F.3d 1567, 1575 (11th Cir. 1995 “A court should be cautious in exerting its inherent power and “must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.” Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001)(quoting US Supreme Court Chambers v. NASCO, Inc., 501 U.S. 32, 50 (1991)). Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001)(citing Chambers v. NASCO, Inc., 501 U.S. 32, 50) (“A court must, of course, exercise caution in invoking its inherent power, and **it must comply with the mandates of due process**”); Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001). Generally, a judgment is void under Rule 60(b)(4) “If the court that rendered it lacked jurisdiction of the subject matter, or the of the parties, **it acted in a manner inconsistent with due process of law.**” (citations omitted).

This patently illegal order formed the basis of a criminal contempt complaint filed against me. See D.C. Case No 02-14020-CR-Moore, (D.E. 6), URL: <http://secretlaw.com/NewComplaint/HelpLetters/CriminalContempt/de6.pdf> , (D.E. #1), URL: <http://geocities.com/mcneilmason/secret/02-14020/de1.pdf> . Moreover, both the Eleventh Circuit and Mr. Graham denied me the right to appeal this unlawful order and then turned around and used this unlawful order against me to uphold a decision of Mr. Graham in D.C. Case No. 99-14027-CV-Graham and Eleventh Circuit Case No. 01-13364-A. The Eleventh Circuit is now claiming that I did not appeal the injunction of September 20, 2001, (DE #878). On May 20, 2004 [Eleventh Circuit Case No. No. 04-11894-B], the Eleventh Circuit made the following bold assertion:

¹ Judge Graham has refused to put this “order” in writing, consequently, this Court is going to have order transcripts and take statements from the attendants.

Moreover, Mason had an adequate alternative remedy to mandamus relief in that he could have timely appealed the September 20, 2001 order, but did not do so.

See Page 4, Opinion, Eleventh Circuit Case No. No. 04-11894-B, URL:

<http://geocities.com/mcneilmason/secret/04-11894/04-11894.tif>

This statement is inaccurate, false, completely undermined by the RECORD.

RECORD FACTS

A direct appeal was originally docketed for Eleventh Circuit Case No. 01-13664-A (D.C. Case No. 99-14027-CV) on **July 3, 2001**. See [Appeal Docketing Letter](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/docketappeal.pdf>. Mr. Graham, *sua sponte*, and without due process notice, wrote an order restricting my filings on **September 20, 2001**, or three months after the case was noticed for appeal. See [DE-878](#), URL: <http://www.geocities.com/mcneilmason/secret/99-14027/de878.pdf>. The appeal briefs were not actually filed until February and March of 2002. Appeal Briefs: [First Initial Brief](#) (Stricken), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/InitialBriefPending.pdf> [Corrected Initial Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/CorrectedInitialBrief.PDF>, [Appellees Answer Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/AppelleeBrief.pdf>, [Reply Brief](#), URL: <http://www.geocities.com/mcneilmason/secret/01-13664/ReplyBrief.pdf>, [Appellant's Motion For Rehearing](#). URL: <http://www.geocities.com/mcneilmason/secret/01-13664/MotionForRehearing.pdf> The Eleventh Circuit struck my brief for arguing the order of September 20, 2001 because they claimed it was "beyond the scope of appeal. " See attached [01-13664 Order Striking Appellant Brief.pdf](#), URL: http://geocities.com/mcneilmason/secret/01-13664/01-13664_Order_Striking_Appellant_Brief.pdf. The really appalling and despicable act of dishonesty here is that the Eleventh Circuit turned around and used the same order or injunction of **September 20, 2001** that they struck my brief for arguing to justify affirming the dismissal of the case, 99-14027 pursuant to Rule 41(b), Fed.R.Civ.P. which was closed on June 20, 2001.

Mason's continual filing of motions with the court addressing matters previously settled prompted the district court to prohibit Mason from further filings without explicit permission and initiate criminal contempt proceedings. Therefore, the record supports the district court's implicit finding that a sanction less than dismissal of the action with prejudice would have had no effect.

See Opinion_OCR.htm, pg. 14, <http://geocities.com/mcneilmason/secret/01-13664/Opinion-OCR.htm>. This same injunction of **September 20, 2001** is also referenced on page 9, note 4, Opinion_OCR.htm, URL: <http://geocities.com/mcneilmason/secret/01-13664/Opinion-OCR.htm> .

On **September 29, 2001**, even though the case was already on appeal [D.C. Case No. 99-14027-CV], I filed a Petition for Writ of Mandamus And Petition For Writ Of Prohibition. See Petition, URL:

<http://secretlaw.com/NewComplaint/HelpLetters/15754/WritOfMandamusAndWritOfProhibition.pdf>. A mandamus petition filed with the court and the opposing party satisfies the requirement for a "notice of appeal". It seems absurd to argue otherwise, which indeed no one has. In STEVENS v. HEARD, 674 F.2d 320 (5th Cir. 1982), the court concluded that a document which was timely filed with the court, would be sufficient to perfect an appeal if it "clearly evinces an intent to appeal." See also U.S. v. GRANT, 256 F.3d 1146 (11th Cir. 2001). More importantly, the Eleventh Circuit and the US Supreme Court have held that a timely filed mandamus petition satisfies the notice of appeal requirement. See YATES v. MOBILE COUNTY PERSONNEL BD., 658 F.2d 298,299 (5th Cir. 1981). SMITH v. BARRY, 502 U.S. 244 (1992). Rather than rule on the merits of this petition the Eleventh Circuit simply ignored the petition on December 5, 2001. See URL: <http://geocities.com/mcneilmason/secret/01-15754/P2185803.jpg>. Additionally, the Eleventh refused a subsequent motion for rehearing demanding to know the reason for refusing to rule on the merits, however, the Eleventh Circuit, simply ignored the request again. See URL: <http://geocities.com/mcneilmason/secret/01-15754/RehearingDenial.tif>

Judge Edmondson, have you seen my right to appeal this illegal injunction? I can't find it? It appears that you and the Eleventh Circuit is not going to investigate these allegations either through the appellate process, or through a section 372(c) Complaint. As this complaint clearly demonstrates, you and your court have not found a forum where I could seek redress for alleged misconduct of Mr. Donald L. Graham. This is hardly what Congress had it mind. Judge Edmondson, this Complaint is not for your benefit, it is submitted to build a record and to allow scrutiny by the relevant policy makers in this country and for the benefit of the 2004 Rehnquist-Breyer Commission on Judicial Discipline. This complaint is submitted to document and prove that the current system of judicial discipline is really a joke. You will make the case by your continued to refusal to discipline Mr. Graham or even acknowledge his wrongdoing and illegal conduct.

Sincerely,

Macellus M. Mason
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Phone: 863-314-9307

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